



POLICE DEPARTMENT

June 16, 2009

MEMORANDUM FOR: Police Commissioner

Re: Detective Camilo Delgado
Tax Registry No. 891440
Bronx Special Victims Squad
Disciplinary Case No. 84501/08

The above-named member of the Department appeared before me on February 20, 2009, charged with the following:

1. Said Detective Camilo Delgado, assigned to the Bronx Special Victims Squad, while off-duty, on or about January 1, 2008, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did damage property belonging to another, without permission or authority to do so, to wit: said Detective did damage a mirror on a motor vehicle with a baseball bat.

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Detective Camilo Delgado, assigned to the Bronx Special Victims Squad, while off-duty, on or about January 1, 2008, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective was involved in a verbal dispute with a person, or persons, known to this Department.

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT

3. Said Detective Camilo Delgado, assigned to the Bronx Special Victims Squad, while off-duty, on or about January 1, 2008, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did improperly display a firearm to a person, or persons, known to this Department.

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT

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4. Said Detective Camilo Delgado, assigned to the Bronx Special Victims Squad, while off-duty, on or about January 1, 2008, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did fail to carry his firearm in a holster, as required.

PG 204-08 Page 2, Paragraph 10 – FIREARMS – GENERAL REGULATIONS

5. Said Detective Camilo Delgado, assigned to the Bronx Special Victims Squad, while off-duty, on or about January 1, 2008, in Bronx County, did wrongfully make false statements to a member of the Department who was conducting an official investigation, in that said Detective did state to Lieutenant Palmieri of the 43rd Precinct, when said Detective was being questioned by Lieutenant Palmieri regarding the dispute on that date, that he did not damage a motor vehicle during said incident, and/or that he was not armed during said incident, and/or that he did not display a firearm during said incident, when said statements were, in fact, false.

PG 203-08 Page 1, Paragraph 1 – MAKING FALSE STATEMENTS

The Department was represented by Lisa McFadden, Esq., Department Advocate's Office and Respondent was represented by James Moschella, Esq.

The Respondent, through his counsel, entered Guilty pleas to all but the last of the subject charges to which he entered a Not Guilty plea. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1 through 4. The Respondent is found Guilty of Specification No. 5.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Cosmo Palmieri and Detective Gina Sarubbi as witnesses and offered the statement of [REDACTED].

Lieutenant Cosmo Palmieri

Lieutenant Palmieri, who is assigned to the 43 Precinct, recalled that on January 1, 2008, he was assigned as the midnight platoon commander. At 0345 hours, he responded to a radio transmission that a "man with a gun" was outside 96 Beacon Lane. He arrived at that location within five minutes of receiving the radio transmission. A security guard at the gated community told him that there was "a problem around the corner." He drove to where the guard directed him and observed that the side view mirror on a parked car was damaged. A man at the scene told him that a "guy" who lived around the corner and who "might be a cop" had hit the mirror with a baseball bat and had displayed a gun. Lieutenant Palmieri went around the corner and observed the Respondent standing in front of his residence.

The Respondent told Lieutenant Palmieri that he was "on the job." He related that there was an ongoing problem regarding parking. Lieutenant Palmieri asked him whether he had displayed his weapon. Lieutenant Palmieri was unsure whether in his question he had used the word "display" or whether he had said "show" or "point." He recalled that the Respondent told him, "I didn't pull out my gun." When Lieutenant Palmieri asked him whether he had his firearm on him, the Respondent told him, "It is in the house with my wife." When Lieutenant Palmieri was asked whether he had questioned the Respondent about the damaged mirror, Lieutenant Palmieri answered, "I'm not sure if I did." Lieutenant Palmieri recalled that he was interviewed at the 43 Precinct on the night of this incident by "the call out team." The Department offered a portion of the transcript of the tape-recorded interview of Lieutenant Palmieri that was conducted that night. During this interview, Lieutenant Palmieri stated that he had asked

the Respondent "about the mirror," and that the Respondent "said that he didn't break any mirrors or damage any cars." [Department's Exhibit (DX) 2 p. 5] When his interviewer asked him, "So he stated to you that . . . he didn't do any damage and he did not display a firearm?" Lieutenant Palmieri answered, "Right." [DX 2 p. 6]

On cross-examination, he confirmed that the people who were standing near the car with the damaged mirror all told him that they had only seen a gun in the man's waist area, not in his hand. No one alleged that the man had displayed a shield or swung a bat at anyone or anything other than the mirror. He testified that the Respondent immediately identified himself as a member of the service by showing him his Department shield. His conversation with the Respondent lasted about five minutes.

He agreed that his interview of the Respondent was not conducted under the provisions of Patrol Guide Procedure 206-13 (PG 206-13). He noted that PG 206-13 interviews are never conducted on the street. He testified that he only briefly questioned the Respondent because he merely wanted to get "preliminary information." He did not believe that the Respondent was trying to impede his investigation.

On redirect examination, he testified that when he asked the Respondent whether he was armed, the Respondent "said no, he didn't have his gun on him. He said it was in the house." Lieutenant Palmieri confirmed that it was "accurate" that at his interview he had been asked whether the Respondent "told you the firearm was in the house the whole time," and that he had answered this question by saying, "Yes."

Detective Gina Sarubbi

Detective Sarubbi, who is assigned to the Chief of Detective's Investigations Unit, testified that she was assigned to the investigation of this incident. On February 26, 2008, she and Sergeant Noel Lamberty conducted the Respondent's Official Department Interview. She recalled that at this interview the Respondent waived the reading of Patrol Guide sections 203-08 and 206-13 and he stated that he understood the import of those sections. When the Respondent was asked whether he had caused damage to the driver's side mirror on a vehicle on January 1, 2008, he answered "Yes." When the Respondent was asked whether he had displayed weapon, he also answered "Yes."

On cross-examination, she testified that the Respondent provided candid and truthful answers during his Official Interview. When the Respondent was asked whether he had hit the driver's side mirror of a car with a baseball bat, he answered "Yes."

[REDACTED]

A tape-recorded interview of [REDACTED] a security guard at the Respondent's residential complex, was conducted by Captain Melendez and Sergeant Lagrasta on January 1, 2008. The Department offered in evidence a portion of the transcript of this interview [DX 3]. At this interview, [REDACTED] stated that he was present outside [REDACTED] on January 1, 2008, at about 0345 hours. [REDACTED] stated that the Respondent "displayed" a gun. When [REDACTED] was asked, "How did he display his gun?" [REDACTED] answered, "By lifting up his shirt like that – I could see his belly button and everything."

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent, who has been on modified assignment since this incident, testified that he and his family reside in a house located within a gated residential complex. His family has been assigned two parking spaces for their exclusive use; a "primary" parking space and a "secondary" spot. He testified that over a period of several weeks during late 2007, a parking dispute had developed because [REDACTED] and his brother [REDACTED] would park their vehicles in the spaces reserved exclusively for the Respondent's use. Although [REDACTED] had promised him that this would not happen again, when the Respondent returned from a neighbor's New Years Eve party during the early morning of January 1, 2008, and tried to park his car, he saw that [REDACTED]'s car was, once again, parked in his space.

The Respondent admitted that he raised his voice at [REDACTED] and said, "I tell you 20,000 times. You even parked on my secondary spot." Although [REDACTED] "kept apologizing" for parking in the Respondent's space, the Respondent reached into the rear of his SUV and grabbed his daughter's two-foot-long "Derek Jeter" Yankee souvenir baseball bat. He took "one hard swing" with this bat at the driver's side view mirror on [REDACTED]'s car knocking the mirror off its mooring [The Department offered three photos depicting the damaged mirror which is seen hanging on the side of the car connected to the car only by an electrical wire] (DX 1).

The Respondent testified that he "regretted it the moment I did it. I was so wrong; I felt so bad." Because he was "hot and heated," the Respondent removed his jacket. When he did this, the [REDACTED] brothers were able to see the handle of his firearm because it was tucked into his waistband. He never grabbed it or removed it during this incident.

The Respondent testified that he then approached a security guard and requested to be allowed to park his car in a non-assigned space. The security guard permitted him to do this. After he parked his car, the Respondent entered his residence and immediately placed his firearm into his safe. When Lieutenant Palmieri appeared at his residence, the Respondent met him outside the front door. When Lieutenant Palmieri asked him, "Do you have your gun?" he told him, "No. It's in my house." He was not suspended as a result of this incident.

The Respondent testified that on January 1, 2008, he acted out of frustration in hitting the mirror with the bat, that this action was completely out of character and that he is "deeply sorry" for the "embarrassment" he caused this Department. He volunteered that he takes "full responsibility" for his behavior that night and that "if I could take it back, I would." He testified that he believes that the 13 months he has served on modified assignment "is punishment enough." [REDACTED] and [REDACTED] are still his neighbors and he and the [REDACTED] participate in the same fantasy football league.

On cross-examination, when the Respondent was asked whether he was angry during the incident on January 1, 2008, he responded that he was "upset." He acknowledged that he did not feel threatened by the [REDACTED] and that they did not yell at him. He had no recollection that anyone had said to him, "Are you going to shoot me now?" When the Respondent was asked whether Lieutenant Palmieri had asked him if he

had damaged the mirror, he testified that he could not recall. He testified that he respectfully refused to answer any questions because he “just wanted to protect myself at that point.” He paid \$400 to have the mirror repaired.

FINDINGS AND ANALYSIS

Specification Nos. 1 through 4

The Respondent has pleaded Guilty to having engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by damaging the mirror on a motor vehicle by hitting it with a baseball bat, by becoming involved in a verbal dispute, and by improperly displaying his firearm, which was not holstered but improperly tucked into his waistband.

The Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1 through 4.

Specification No. 5

It is charged that the Respondent wrongfully made false statements to Lieutenant Palmieri who was conducting an official investigation regarding an incident, in that he falsely told him that he did not damage a motor vehicle during the incident, and/or that he was not armed during said incident, and/or that he did not display a firearm during the incident. The charge cites to Patrol Guide section 203-08 which is entitled: Intentionally making a false official statement.

The Assistant Department Advocate (ADA) cited two prior decisions,
Disciplinary Case No. 81158/05 (signed by the Police Commissioner on August 5, 2008)

and Disciplinary Case No. 82470/07 (signed on June 11, 2007), to support her argument that a member can be found guilty of having violated Patrol Guide section 203-08 where the member provides false answers to questions posed by officers who have responded to the member's residence to investigate an incident. However, in neither of these cases was the Respondent found guilty of having violated Patrol Guide section 203-08. In each case, the Respondent pleaded guilty to a charge of engaging in conduct prejudicial to the good order, efficiency or discipline of the Department, in violation of Patrol Guide section 203-10.

Respondent's counsel argued that this Specification should be dismissed. He asserted that Patrol Guide 203-08 does not apply to statements made by a member of the service where, as here, the member is being questioned at his residence immediately after the occurrence of an incident. The specific wording of Patrol Guide section 203-08 does support the Respondent's position. Patrol Guide section 203-08 states:

Examples of circumstances in which false statements may arise include, *but are not limited to* (emphasis added), lying under oath during a civil, administrative, or criminal proceeding or in a sworn document; lying during an official Department interview conducted pursuant to Patrol Guide 206-13, "Interrogation of Members of the Service" or an interview pursuant to Patrol Guide 211-14, "Investigations by Civilian Complaint Review Board," and lying in an official Department document or report.

Thus, a plain language reading of Patrol Guide section 203-08 establishes that this section is not limited solely to the proceedings it references nor does it explicitly exclude false statements made by an off duty member who is questioned at his residence by on-duty members.

What prior decisions clearly establish is that members are not permitted to make false statements in response to questions posed by responding officers regarding the facts and circumstances surrounding an incident the member has knowledge of or was

involved in. This is true whether the Patrol Guide citation listed under the false statement charge is section 203-08 or section 203-10.

Respondent's counsel also argued that this Specification should be dismissed because Lieutenant Palmieri did not follow the procedures delineated in Patrol Guide 206-13, which governs Interrogation of Members of the Service, prior to speaking to the Respondent about his involvement in this incident.

I credit Lieutenant Palmieri's testimony that at the time he approached the Respondent, who was standing in front of his residence, the only information he possessed was an allegation that a "guy" who lived around the corner and who "might be a cop" had damaged the side mirror on a parked car with a bat and had displayed a gun. Thus, at the time Lieutenant Palmieri approached the Respondent and began to speak to him, he did not know if the Respondent had been involved in the incident and he did not even know whether the Respondent was actually a member of the service. Moreover, I credit Lieutenant Palmieri's testimony that the Respondent spoke to him freely and offered an unprompted description of the ongoing problem regarding parking. Since Lieutenant Palmieri had received a complaint that a "guy" who had displayed a gun had damaged a mirror with a bat, he needed to promptly ascertain if the Respondent was the "guy" he was looking for or whether he needed to keep looking. I find that the questions he posed to the Respondent were specifically related to this limited purpose.

Finally, Respondent's counsel argued that this Specification should be dismissed because the Respondent's statements to Lieutenant Palmieri constituted mere denials that he had engaged in misconduct and Patrol Guide 203-08 assures members that:

The Department will not bring false official statement charges in situations where, as opposed to creating a false description of events, the member of the Department

merely pleads not guilty in a criminal matter, or merely denies a civil claim or an administrative charge of misconduct.

The statements Lieutenant Palmieri made to investigators on the night of this incident¹ do not support Respondent's counsel's position. I credit what Lieutenant Palmieri told investigators on the night of this incident. Lieutenant Palmieri had no motive to want to hurt the Respondent by falsely accusing him of lying to him. Moreover, since Lieutenant Palmieri's statements to the investigators were made soon after his conversation with the Respondent, Lieutenant Palmieri's contemporaneous recollection of their conversation is, as he testified, the "most accurate" and precise version of what the Respondent said to him that night.

Lieutenant Palmieri told investigators that even though he had specifically asked the Respondent only "about the mirror," the Respondent expansively told him "that he didn't break any mirrors or damage any cars." Most significantly, Lieutenant Palmieri confirmed that when he was asked whether the Respondent "told you the firearm was in the house the whole time," he had answered, "Yes."

By telling Lieutenant Palmieri that his firearm had been inside his residence the entire evening, the Respondent was not merely denying that he had displayed his firearm that night, he was creating a false description of events with regard to where his firearm was located at the time he confronted the Hazens about parking in his parking spot.

As a result, I find that the Respondent's false claim to Lieutenant Palmieri that his firearm was inside his residence the whole time constitutes an actionable false statement.

The Respondent is found Guilty of Specification No. 5.

¹ These statements were admitted into evidence as past recollection recorded.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on July 9, 1987. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pleaded guilty to engaging in conduct prejudicial to the good order, efficiency or discipline of the Department by damaging a side view mirror on a motor vehicle by hitting it with a miniature baseball bat, by becoming involved in a verbal dispute with the Hazens on the street, and by improperly displaying his unholstered firearm to the Hazens. The Respondent has also been found Guilty of wrongfully making false statements to Lieutenant Palmieri who was investigating a complaint that a man had damaged the mirror on a car and had displayed a gun.

The ADA recommended that the penalty to be imposed on the Respondent consist of a 30-day suspension and forfeiture of 30 vacation days, for a total loss of 60 days, and that he serve one year on dismissal probation.

In Disciplinary Case No. 81158/05, an 11-year member with no prior formal disciplinary record forfeited all of his time and leave balances, was placed on dismissal probation and entered into agreement to immediately file for vested retirement after he pleaded Guilty to having failed to safeguard his firearm which resulted in his girlfriend discharging a round from the firearm which hit a neighbor who suffered a gunshot wound to the head. That member also neglected to notify the Department of the discharge, failed to request the response of the patrol supervisor, failed to render assistance to the injured

party, neglected to promptly identify himself as an MOS to responding investigators, and responded to investigators' questions in a manner that obfuscated his involvement regarding the discharge and impeded the Department's investigation into the incident.

However, that case differs from the present case in that here the Respondent's firearm was never withdrawn from his waistband, much less discharged. Also, no person was injured here; the Respondent did not fail to render assistance to an injured party; and the Respondent promptly identified himself as an MOS to the responding lieutenant.

In Disciplinary Case No. 82470/07, a 15-year member with no prior formal disciplinary record forfeited 30 vacation days after he pleaded guilty to having neglected to notify the patrol supervisor of an unusual police incident and to falsely telling on duty MOS who responded to his residence that he did not hear a gun shot and that there were no weapons inside his residence. However, that case differs from the present case in that here the Respondent damaged a mirror on a motor vehicle by hitting it with a bat and improperly displayed his unholstered firearm.

Under Specification No. 5, the Respondent has been found guilty of falsely telling the on-duty lieutenant who responded to his residence that his firearm had been inside his residence the entire evening. As the penalty imposed in Disciplinary Case No. 82470/07 demonstrates, prior decisions reflect that there is a qualitative difference between false statements made on the spur of the moment by an off-duty MOS who is being questioned by an on-duty MOS who has responded to his home, and false statements made by an MOS under oath during a civil, administrative or criminal proceeding, or during an Official Department Interview, because at a Patrol Guide 206-13 interview the MOS has

received prior notice as to what he will be questioned about and because the MOS is represented by counsel.

Nonetheless, a period of dismissal probation is warranted here because, unlike the Respondent in Disciplinary Case No. 82470/07, the Respondent here has a prior formal disciplinary record. Most significantly, because of the serious nature of his prior misconduct, he was required to serve a one year period on dismissal probation. That probationary period expired five years before he committed the misconduct which is the subject of these charges.

The Respondent offered a letter dated April 24, 2009, from Bronx County Assistant District Attorney Danielle Pascale commending his detective work which resulted in the conviction of a defendant for the rape of a ten year old girl. Since the Respondent has demonstrated that he can be a productive detective, it would appear that a suspension may be unnecessary.

Accordingly, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. Consistent with the doctrine of progressive discipline, I further recommend that the Respondent forfeit 60 vacation days.

APPROVED
AUG 11 2009
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner-Trial